IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v. **No. A-1-CA-40228**

JESSICA VASQUEZ,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY
Melissa A. Kennelly, District Court Judge

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for Appellant

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for Appellee

MEMORANDUM OPINION

YOHALEM, Judge.

{1} This matter was submitted to the Court pursuant to this Court's notice of assignment to the general calendar with modified briefing. Following consideration of the brief in chief, the Court assigned this matter to Track 2 for additional briefing, pursuant to the Administrative Order in *In re Pilot Project for Criminal Appeals*,

No. 2022-002, effective November 1, 2022. Now having considered the brief in chief, answer brief, and reply brief, we affirm.

{2} The State appeals from the district court's order suppressing evidence. [BIC i] Specifically, the State argues that the emergency assistance doctrine justified the warrantless entry into Defendant's home, and once inside, the plain view exception applied. [BIC i] In addition, the State contends that, in sua sponte ordering a suppression hearing, the district court failed to state with particularity its challenges to the warrantless entry, and that the district court's suppression order likewise fails to state with particularity why it rejected Officer Hightree's testimony. [BIC i] The State does not challenge the district court's conclusion that Defendant's consent for the police to enter her home was not freely or voluntarily given [RP 109-10], and we therefore do not address that basis of the district court's ruling. *See State v. Garnenez*, 2015-NMCA-022, ¶ 15, 344 P.3d 1054 ("We will not address arguments on appeal that were not raised in the brief in chief and have not been properly developed for review.").

{3} "Appellate review of a motion to suppress presents a mixed question of law and fact. First, we look for substantial evidence to support the district court's factual finding, with deference to the district court's review of the testimony and other evidence presented." *State v. Yazzie*, 2019-NMSC-008, ¶ 13, 437 P.3d 182. (alteration, internal quotation marks, and citation omitted). "Contested facts are

reviewed in a manner most favorable to the prevailing party. We then review the application of the law to those facts, making a de novo determination of the constitutional reasonableness of the search or seizure." (internal quotation marks and citations omitted). *Id.*

{4} This case centers on the reasonableness of the warrantless entry of Defendant's residence under the emergency assistance doctrine.

> The emergency assistance doctrine is an exception to the warrant requirement of the Fourth Amendment. It permits law enforcement officers to enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. The emergency assistance doctrine arises from a police officer's duty as community caretaker to assist those who are seriously injured or threatened with such injury. This duty is totally divorced from law enforcement's separate goal of gathering evidence and investigating crime.

Id. ¶ 15 (internal quotation marks and citations omitted).

{5} The district court concluded that the evidence in this case was seized in "violation of Defendant's rights under either or both the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution." [RP 95] Under the Fourth Amendment, the State must establish two elements to justify a warrantless entry and search of a home under the emergency assistance doctrine. *Yazzie*, 2019-NMSC-008, ¶ 23. First, police must have reasonable grounds to believe an emergency is at hand and there is an immediate need for their assistance to protect life or property. *Id.* Second, police must articulate

"some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." *Id.* (internal quotation marks and citation omitted). Under Article II, Section 10 of the New Mexico Constitution, the State must additionally establish that the primary motivation for the search was a strong sense of emergency, and not an intent to arrest a suspect or seize evidence. *See Yazzie*, 2019-NMSC-008, ¶ 48.

{6} To analyze the first element of the emergency assistance doctrine, we consider whether the district court's factual findings were supported by substantial evidence and whether those findings support a conclusion that law enforcement's entry was objectively reasonable. *See id.* ¶ 24. "An objective review requires us to assess the totality of the circumstances to determine whether a prudent and reasonable official would see a need to act to protect life or property." *Id.* (alteration, internal quotation marks, and citation omitted).

{7} The State argues that police had reasonable grounds to believe there was an emergency and an immediate need for law enforcement assistance to protect life or property. [BIC 9-12] The State specifically contends that the police believed "Defendant and/or her juvenile son's health and safety would be endangered by a delay in entry and they were motivated by a need to address that concern." [BIC 9] In support of that contention, the State cites to testimony indicating that police received a report from Defendant's neighbor that the neighbor heard windows

breaking, banging that the neighbor believed indicated Defendant was getting thrown around Defendant's trailer, Defendant begging someone to stop hitting her, and Defendant's young son screaming for help. [BIC 10] In addition, the neighbor reported that she was extremely worried about Defendant's child. [BIC 10]

{8} However, as the answer brief points out, by the time the dispatched law enforcement arrived, the possible domestic battery appeared to no longer be ongoing. [AB 5] When Officer Romero arrived on the scene, he saw Defendant and his son out on the porch. [AB 5, 6] They went quickly back inside the home upon seeing Officer Romero's police vehicle, which suggested that Defendant did not want contact with the police. [AB 5, 6] Officer Romero did not hear anything inside after that. [AB 6] He knocked on the door but no one answered, and he circled the curtilage in an attempt to look into the windows, but all were covered. [AB 5-6] At that time, he was trying to look inside to make sure Defendant and her son had not "put themselves back in harm's way," noting that a prior battery call involving Defendant contributed to his concern. [AB 6]

{9} Officer Hightree arrived after Officer Romero and also noted that he did not hear anything upon his arrival. [BIC 6] He tried and failed to make contact, then circled the house while Officer Romero continued knocking on the front door. [BIC 7] He observed a couple of broken windows and testified additionally,

> this is very hypothetical, . . . [b]ut . . . I was concerned that [Defendant's partner] may be holding [Defendant and her son] captive. Yeah, there's

> a lot of hypotheticals, a lot of possibilities . . . that's why I advised that—'due to the exigency I needed to lay eyes on people inside,' to make sure that nobody was being held against their will.

[AB 7] When the occupants of the residence continued to refuse to answer the door, Officer Hightree gave an "ultimatum" that law enforcement would make forced entry unless someone came to the door. [AB 7-8]

{10} Under these circumstances, we agree with Defendant that the State failed to establish that there were reasonable grounds for the officers to believe that an emergency necessitated their immediate entry into Defendant's home. Viewing the facts in the light most favorable to Defendant and drawing all reasonable inferences in support of the district court's decision, *see id.* ¶¶ 13, 29, there is substantial evidence to support the district court's factual findings. While the district court noted that "police were called to investigate a possible battery in progress to [Defendant]," it found, based on the testimony, that Defendant and her son were standing outside the home and appeared unharmed when law enforcement arrived, and that "when police arrived they observed no screaming or signs of a domestic incident in progress, no signs of battery or harm to [Defendant] or her son, no sign of any perpetrator, and neither [Defendant] nor her son wanted police assistance or involvement." [RP 110, RP 107-108] Thus, although the dispatch provided reason to believe an ongoing emergency might be in progress, the district court's factual findings support the conclusion that any such belief was dispelled upon the officers'

arrival at Defendant's residence. *See State v. Ryon*, 2005-NMSC-005, ¶ 44, 137 N.M. 174, 108 P.3d 1032 (noting that it is not "too much of a burden for the police to corroborate generalized information before they risk intruding into a home" because "[i]n the absence of an obvious life-threatening emergency, corroboration will either confirm the need for immediate emergency action, or dispel it altogether").

{11} Once the officers arrived at Defendant's residence, no circumstances indicated a genuine emergency or that Defendant or her son were otherwise in need of immediate aid. *See id.* ¶ 42 ("To justify the warrantless intrusion into a private residence under the emergency assistance doctrine, officers must have credible and specific information that a victim is very likely to be located at a particular place *and* in need of immediate aid to avoid great bodily harm or death." (emphasis added)). Indeed, Officer Romero observed Defendant and her son standing outside of the home prior to his arrival, at which point they "were not being beaten, were not screaming, were not in an altercation with anyone, and appeared unharmed." [RP 107] *Cf. State v. Cordova*, 2016-NMCA-019, ¶ 13, 366 P.3d 270 (explaining that "while in some cases an occupant's failure to respond to repeated knocking can indicate an emergency, especially in instances where the officers already have specific information that the victim is in the home and seriously injured," the facts of the case did not support a finding that the defendant's failure to respond to

repeated knocking was indicative of an emergency); *State v. Baca*, 2007-NMCA-016, ¶ 28, 141 N.M. 65, 150 P.3d 1015 (citing out of state authority to indicate that the need for immediate intervention would be readily apparent if "police knew of prior history of domestic violence between the defendant and his live-in girlfriend, a neighbor reported hearing an argument, a woman scream, and then silence, no one responded when the officer knocked at the door, and when the defendant finally appeared he was unresponsive to questions and refused to say where his girlfriend was").

{12} We recognize that Officer Hightree concluded, based on "a lot of hypotheticals, a lot of possibilities" that there was an exigency causing the need "to lay eyes on people inside." [AB 7] However, on this record, the district court's findings do not support Officer Hightree's conclusion. *See Baca*, 2007-NMCA-016, ¶ 27 ("Speculation and conjecture are insufficient to establish an emergency at hand and an immediate need for police assistance." (alteration, internal quotation marks, and citation omitted)). Instead the State's presentation was insufficient to establish an emergency. *See Cordova*, 2016-NMCA-019, ¶¶ 12-14 (concluding that the emergency assistance doctrine did not support warrantless entry into a home where no circumstances indicated a genuine emergency, there were no signs of injury observed on the property, and no sounds from inside alerted the deputies that the defendant was in need of immediate aid); *cf. Yazzie*, 2019-NMSC-008, ¶¶ 29, 33

(reasoning that the officer's first-hand knowledge that small children were inside the home and apparently unsupervised and unable to rouse their parents—the officer could hear a small child crying for his mother to wake up—after a neighbor heard a loud thumping sounds minutes before the officer's arrival supported the objective reasonableness of the officer's conclusion that there was an ongoing emergency requiring immediate action). We therefore conclude that law enforcement's entry was unreasonable under the emergency assistance doctrine.

{13} Because we conclude that the State failed to establish the first element of the emergency assistance doctrine under both the Fourth Amendment and Article II, Section 10, we need not address its arguments directed to the remaining elements. *See Yazzie*, 2019-NMSC-008, ¶¶ 23, 48 (outlining elements of the emergency assistance doctrine, all of which must be established for the doctrine to apply); *see also id.* ¶ 16 (explaining that if an entry and search was unreasonable under the Fourth Amendment, we need not apply our interstitial approach). And, as we have concluded that law enforcement did not lawfully enter Defendant's home, we reject the State's argument that the plain view exception applies in this case. *See State v. Ochoa*, 2004-NMSC-023, ¶ 9, 135 N.M. 781, 92 P.3d 1286 ("Under the plain view exception to the warrant requirement, items may be seized without a warrant if the police officer *was lawfully positioned* when the evidence was observed." (emphasis added)).

{14} Finally, we decline to address the State's arguments directed to the district court's procedure. [BIC 21-27] The State's claim that the district court failed to state with particularity why it rejected Officer Hightree's testimony is directed to the additional prong of emergency assistance doctrine under Article II, Section 10 [BIC 24-27], *see Yazzie*, 2019-NMSC-008, ¶¶ 16, 48, and therefore is not pertinent to our conclusion. Nevertheless, we note that the district court explained, "where there are inconsistencies between the officers' sworn suppression hearing testimony and their sworn affidavits for arrest warrant and search warrant," it deemed "the facts in the sworn affidavits to be more credible than the testimony, unless stated otherwise." [RP 107] We remind the State "that appellate courts must afford a high degree of deference to the district court's factual findings if supported by substantial evidence," particularly when testimony is not perfectly aligned with the other evidence. *See id.* ¶ 14; *see also State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856 ("Conflicts in the evidence, even within the testimony of a witness, are to be resolved by the fact[-]finder.").

{15} We need not address the State's argument that it "was unfairly prejudiced when forced to defend the search and seizure without knowing the specific challenges being raised" [BIC 21, 21-23], because the New Mexico Supreme Court has already rejected that claim in this case. *See State v. Vasquez*, 2025-NMSC-008, ¶ 25, 563 P.3d 901 ("[T]he district court did not engage in decision making without

a full opportunity for the parties to present their argument. . . . The district court held a thorough evidentiary hearing and requested follow-up briefing, which the [s]tate and [the d]efendant provided. Only then did the district court make an evidentiary determination."). To the extent the issue presents claims not already rejected by our Supreme Court, the State has presented only speculative arguments regarding prejudice. *See State v. Gardner*, 2003-NMCA-107, ¶ 29, 134 N.M. 294, 76 P.3d 47 (concluding that speculative arguments about prejudice do not demonstrate actual prejudice); *State v. Ernesto M., Jr.* (*In re Ernesto M., Jr.*), 1996-NMCA-039, ¶ 10, 121 N.M. 562, 915 P.2d 318 ("An assertion of prejudice is not a showing of prejudice.").

{16} For the foregoing reasons, we affirm the district court's suppression order.

{17} **IT IS SO ORDERED.**

JANE B. YOHALEM, Judge

WE CONCUR:

MEGAN P. DUFFY, Judge

GERALD E. BACA, Judge